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Supreme Court of the United States

OCTOBER TERM, 1940.

No. 706

WILLIAM B. ROMANS AND EDNA M. HORAN,
Petitioners,

vs.

STATE OF MARYLAND.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND AND BRIEF IN SUPPORT THEREOF.

ELDRIDGE HOOD YOUNG,
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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND.

To the Honorable, Charles Evans Hughes, Chief Justice of the United States, and the Associated Justices of the Supreme Court of the United States:

Your petitioners, (appellants in the Court of Appeals of Maryland) William B. Romans and Edna M. Horan, respectfully show and represent unto your Honors and pray that a writ of certiorari be issued to review the judgment of the Court of Appeals of Maryland, entered in the above entitled cause on, to wit: the 14th. day of November 1940, (R. 113).

I.

Summary and Statement of Matters Involved.

The following statement of fact and questions involved here are taken from the record of the trial in the Criminal Court of Baltimore City and the proceedings in the Court of Appeals of Maryland.

One of the petitioners (one of the appellants below) was a man, William B. Romans, who had been arrested and held by the committing magistrate for the action of the grand jury (R. 7-8) and then indicted with a woman, his sister, Isabelle Romans, alias Mrs. Warfield, alias Dolly Horan, alias Edna M. Horan, which indictment contained five counts, the first count, '*endeavoring to obstruct justice*', and the second, third, fourth and fifth counts charging, in varying forms, *conspiracy to obstruct justice*, (R. 13-19). Isabelle Romans, *alias* was presented by the grand jury before indictment and gave bail, (R. 11-12). The indictment was a consolidation of the two presentments against the man and his sister, (*attempt to obstruct justice*) and also charged *conspiracy* by them.

Edna M. Horan, the other petitioner, (also appellant below) was never indicted. She was arrested on a bench warrant charging her with *attempting to obstruct justice* and gave bail, (R. 19-20).

When William B. Romans and his sister, Isabelle Romans were called for trial to answer the indictment, (R. 29-32) the State's Attorney of Baltimore City substituted Edna M. Horan for Isabelle Romans who was discharged (R. 42-51).

Demurrers were filed by the petitioners herein and overruled (R. 3, 4, 5, Docket Entries, and 21-22) and both were convicted on three counts of the indictment; "1", obstructing justice, and "2" and "4", conspiracy, (R. p. 4 Docket Entries) by the Court without a jury.

Motions were then made specifically pointing out the proceedings contended to be illegal and violative of the Constitutional guarantees, (R. 23-28-35-39) which the Criminal Court of Baltimore City overruled, and on appeal the Court of Appeals of Maryland entirely ignored the contention of the petitioners in the *nisi prius* court and here, (R. 105-113) that the verdict of 'guilty' on the first, second and fourth counts and the judgments imposing fines and imprisonment were not the result of a fair and impartial trial, i. e. the petitioners here were convicted without due process of law, by a court not having jurisdiction of the parties or subject matter, without notice and without an opportunity to be heard.

The only reference to the contention of the petitioners that the constitutional guarantees of both the Federal and State constitutions were violated, that there was no 'due process of law', is, (R. 109):

> "A motion for a new trial was made and thereupon the accused filed successively a number of motions which were all denied, as was the motion for a new trial. The court agrees with the disposition made of the motions and finds no occasion to discuss but two further questions . . ."

II.

Questions Presented.

1. The petitioners were deprived of a fair and impartial trial, deprived of their liberty and property in violation of the law of the land, denied due process of law:

(a) In that they were both tried and convicted of conspiracy, for which Edna M. Horan, one of them, had not been indicted.

(b) In that the Criminal Court of Baltimore City did not acquire jurisdiction of either the person or the crime charged, when the judge presiding therein entered a verdict of guilty of conspiracy against both petitioners, for which crime one had neither been indicted nor charged.

(c) In that one of them, Edna M. Horan, convicted on charges of obstructing justice and of conspiracy, had been substituted for another woman, Isabelle Romans, (indicted by the grand jury, then dismissed and discharged by the trial court).

(d) In that it is violative of the 14th. Amendment of the Constitution of the United States (and Articles 21 and 23 of the Declaration of Rights of Maryland) for the Court of Appeals of Maryland to affirm a judgment of the Criminal Court of Baltimore City convicting the petitioners of *obstructing justice* and *conspiracy* for which several offenses or crimes both had neither been indicted or in any other manner charged.

2. That to substitute at the trial for one of two persons, indicted by a grand jury for offenses of obstructing

justice and conspiracy, another, who had not been indicted, arrested and informed of the offenses, and enter a verdict and judgment of guilty, confers jurisdiction of neither the person nor the subject matter of the crime alleged, and is a denial of *due process of law*, (14th. Amendment of United States Constitution); also is a denial of the *right to be informed of the accusation, and deprives a person of his property and liberty but by the Law of the Land*, (Declaration of and Rights of Maryland).

III.

Reasons Relied on for Allowance of the Writ.

(a) That the Court of Appeals of Maryland has decided a Federal question involving the construction and application of the 14th. Amendment of the Constitution of the United States in conflict with the applicable decisions of this Court.

(b) That the Court of Appeals of Maryland has decided a Federal question by denying due process of law to citizens of the State of Maryland by convicting petitioners of crime in violation of the 14th. Amendment of the Constitution of the United States.

Wherefore your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals of Maryland commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record of the proceedings in cases numbered and entitled on its docket for the October Term 1940,

No. 2 William B. Romans, appellant, v. State of Maryland, appellee, No. 3 Edna M. Horan, appellant, v. State of Maryland, appellee, and that said judgment of the Court of Appeals of Maryland may be reversed by this Honorable Court, and that your petitioners have such other and further relief in the premises as to this Honorable Court may seem equitable, just and proper.

ELDRIDGE HOOD YOUNG,
Counsel for William B. Romans,
and Edna M. Horan, Petitioners.

Supreme Court of the United States

OCTOBER TERM, 1940.

No.....

WILLIAM B. ROMANS AND EDNA M. HORAN,
Petitioners,

vs.

STATE OF MARYLAND.

BRIEF IN SUPPORT OF PETITION.

I.

Statement of the Case.

The statement of the case in the foregoing petition is, it is respectfully suggested, sufficient for the purposes of this brief and is hereby referred to and incorporated herein by reference.

II.

Specifications of Error.

(a) The Court of Appeals of Maryland below erred in affirming the the judgments and sentences of fines and imprisonment imposed by the Criminal Court of Baltimore City (R. 6).

(b) The Court below erred in refusing to consider, denying or ignoring *due process of law* guaranteed to citizens of the United States under the Fourteenth Amendment of the Constitution of the United States, (R. 23-25, 26-27, 35-39, 109).

(c) The Court below erred in affirming judgments of conviction, imposing fines and imprisonment on the petitioners here, who had not been informed of and charged with the crimes of which they were convicted, the proceedings being in violation of the 14th Amendment of the Constitution of the United States and also of Articles 21 and 23 of the Declaration of Rights of Maryland, (R. 113).

(d) The Court below erred in holding that the substitution of one person for another as a traverser charged with crime is a matter of form in violation of the constitutional guarantees, thus denies due process of law, 14th Amendment of the Constitution of the United States, and, the Declaration of Rights of Maryland, deprives one of his *liberty* or *property, but by the Law of the Land,* (R. 21-22, 29-32, 44, 50, 108).

III.

Constitutional Provisions and Statutes Involved.

Constitution of the United States Amendment XIV:

> Sec. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or

property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Declaration of Rights of Maryland:

Art. 21. That in all criminal prosecutions, *every man hath a right to be informed of the accusation against him;* to have a copy of the indictment, or charge in due time (if required) to prepare his defense; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

Art. 23. That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or *deprived of his life, liberty or property,* but by the judgment of his peers, or by the Law of the Land.

Maryland Code, Public General Laws (Flack) Article 27 (Vol. I, page 1280):

646. Whenever the misnomer of any defendant or defendants is pleaded in abatement to any indictment in any of the courts of this state having criminal jurisdiction, it shall be lawful for the State's Attorney prosecuting the same, or other person prosecuting for the state, on application to the Court, to amend the said indictment by inserting in the place of the name or names so erroneously set forth in the said indictment the true name or names of such party or parties, as disclosed in the said plea of abatement, and it shall be the duty of the clerk of the court to endorse the amendment, and to enter the said case upon the docket of the court, according to the true name or names of the party or parties so indicted.

IV.
ARGUMENT.
A.
Unless the Criminal Court of Baltimore City had Jurisdiction of the Person and the Subject Matter the Trial is a Mere Nullity.

Isabelle Romans, under three aliases, sister of William B. Romans, one of the petitioners, was presented by the grand jury for the offense of *obstructing justice,* was arrested and gave bail and then with her brother indicted for that offense and *conspiracy.* Edna M. Horan, *alias,* was later arrested on a bench warrant for an offense of *obstructing justice only.* She was placed on trial with William B. Romans and convicted of three offenses, one of obstructing justice, and *two of conspiracy.*

This court has announced that 'conviction upon a charge not made would be a sheer denial of due process'.

Thornhill v. Alabama, 310 U. S. 88 at 96.

See also:

State v. Goetz, 65 Kan. 125 at 128.
People v. Campbell, 4 Parker Crim. (N. Y.) 386 at 387-8.
Wilson v. State, 16 Texas 246 at 248.
West v. Cabell, 153 U. S. 78 at 85-7.

The phrase "by the Law of the Land" in Article 23 of the Declaration of Rights of Maryland has been declared by the Maryland Court of Appeals to have the same meaning as "due process of law" in the Federal Constitution.

Solvuca v. Ryan & Reilly Co., 131 Md. 270.

B.

The Accused Must be Informed of the Charge, I. E. Notice of the Charge Must be Given to the Accused.

To have notified William B. Romans by indictment that he was charged with conspiracy with his sister Isabelle Romans, who had been arrested and given bail and then discharged, is not being *informed of the accusation against him,* (conspiracy with Edna M. Horan, not a sister) the guarantee under Article 21 of the Maryland Declaration of Rights.

To try and convict the other petitioner, Edna M. Horan, on charges of conspiracy with William B. Romans, when she had never been served with any process charging her with conspiracy, is a more flagrant denial of that right.

The traverser must be informed of the *whole* charge and not of a part only.

Goeller v. State, 119 Md. 61 at 63-67.

> "Thus the accused shall have the 'right to be informed of the accusation against him and to have a copy of the indictment or charge in due time to prepare his defense' Bill of Rights, Art. 21, 'No person shall be held on presentment or indictment of a grand jury'. 5th. Amendment, United States Constitution. It is all the more necessary, therefore, that the presentment or charge should be full and definite so that if the accused should wish to avail himself of a speedy trial without waiting for the preparation and filing of a formal indictment he may safely do so."
>
> State v. Kiefer, 90 Md. 165 at 173.

"It has never been doubted by this Court, or any other so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they, together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirement of due process of law."

Powell v. Alabama, 287 U. S. 45 at 68.

C.

Discharging a Person Presented, Apprehended on Presentment, and Indicted so as to Substitute Another at the Trial, is Unknown in Criminal Procedure.

The trial court said;

"(The Court) that is, Isabelle Romans was arrested first," (R. 42).

And later inquired;

"(The Court) is Dolly Horan a defendant in this case?" (R. 43).

And further;

"(The Court) Then it seems to me all proceedings against Isabelle Romans be quashed; proceedings against Dolly Horan remain in full force." (R. 50-51).

The attempt to justify substituting one person, not indicted, apprehended or notified of the offenses charged, for another is, that an amendment for misnomer is allowable. It is only permitted, under the Maryland law, when a plea in abatement is interposed, *and no such plea was interposed.*

Md. Code, P. G. L. (Flack) Art. 27, Sec. 646.

A misnomer is a matter of form. To arrest Isabelle Romans after presentment, accept bail, and then indict Isabelle Romans, and issue summons for Isabelle Romans to come in for trial, is a certain, definite and continuous determination that Isabelle Romans is the person identified by the grand jury as the one accused of *obstructing justice* and *conspiracy*.

It is not mere matter of form, but *of substance* most substantial, to attempt to substitute another person, Edna M. Horan, charged with the offense of *obstructing justice* only—not conspiracy—for Isabelle Romans, discharge her, and convict the other for crimes of *obstructting justice* and *conspiracy*.

Under a statute permitting amendment in matter of form, it is generally held that the court may allow an amendment to an indictment in correction of a misnomer therein as to the name of the accused, when *no change of identity* is involved, the defect being one of form only.

7 A. L. R. (Anno.) p. 1520.

> "Third. The scope and operation of the Fourteenth Amendment have been fruitful sources of controversy in our constitutional history. However, in view of its historical setting, and the wrongs which called it into being the due process provision of the Fourteenth Amendment—just as that in the Fifth—has led few to doubt that it was intended to guarantee procedural standards adequate and appropriate, then and thereafter, to protect at all times, people charged with or suspected of crime by those holding positions of power and authority".
>
> Chambers v. Florida, 309 U. S. 227 at 235-6.

To convict Edna M. Horan, charged, if at all, with obstructing justice, of conspiracy also would be conviction

on a charge not made, and likewise would be the conviction of William B. Romans.

Conviction upon a charge not made is sheer denial of due process.

DeJonge v. Oregon, 299 U. S. 356 at 362.

D.

CONCLUSION.

Can it be held in a court of justice, where orderly procedure has been instituted for the protection of the citizen against the State, that it is *due process,* or, the *Law of the Land,* to charge one person with offenses, arrest another for a separate and different crime, and at the trial give the prosecuting officer for the State the right to substitute another, charged with that separate and different crime, for trial on an indictment returned by the grand jury and have the nisi prius court discharge the one, without trial, and convict the other? The answer is most certainly:

> "The law, as we have seen, is sedulous in maintaining for a defendant charged with crime whatever forms of procedure are of the essence of an opportunity to defend. Privileges so fundamental as to be inherent in every concept of a fair trial that could be acceptable to the thought of reasonable men will be kept inviolate and inviolable, however crushing may be the presence of incriminating proof. But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."
>
> Snyder v. Mass., 291 U. S. 97 at 122.

In this case we suggest to keep the balance true is to have the writ issue so that, as we believe the record

abundantly shows, the petitioners may not stand convicted of crimes for which they have never been charged under the law.

Respectfully submitted,

ELDRIDGE HOOD YOUNG,
Counsel for William B. Romans,
and Edna M. Horan, Petitioners.